IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 494 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HASMUKHLAL B RAMI

Appearance:

MR BD DESAI APP for Petitioner

MR AD SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/04/2001

ORAL JUDGEMENT (Per : MR.JUSTICE J.M.PANCHAL)

1. The acquittal of the respondent No. 1 of the offences punishable under Sections 5(1)(d), 5(2) of the Prevention of Corruption Act, 1947 as well as that of the respondent no. 2 of the offences punishable under Sections 165 - A of Indian Penal Code and acquittal of the respondents of the offences punishable under Sections 161, 165-A read with Section 34 of the Indian Penal Code and Section 5(1)(d) of the Prevention of Corruption Act, 1947 read with Section 34 of the I.P.C. recorded by the learned Special Judge, City Civil Court, Ahmedabad vide judgement dated February 19, 1990 rendered in Special Case No. 1/89 is the subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure, 1973.

2. The respondents were holding the post of Supply Inspectors in the office of the Controller of Civil Supplies, Paldi Zonal Office, Ahmedabad in the year 1987. The complainant i.e. Babulal Mohanlal Modi was running a fair price shop in the name and style of Shantivan Aanaj Bhandar at Paldi in the partnership with one Rajeshkumar Champaklal Shah. The respondents being Supply Inspectors were entitled to inspect fair price shop of the complainant and look into its dealings. Though, the complainant Babulal had 25% share in the business, he was looking after the sale and purchase of essential articles as well as accounts of the firm. The case of the prosecution is that on March 18, 1987, the respondents visited the fair price shop of the complainant and after necessary endorsements were made in the visit book, the respondent no. 1 asked the complainant to understand in dealing with them and on inquiry being made by the complainant, the respondent no. 1 told the complainant that in a fair price shop, it was easy to find out irregularities and therefore, complainant should pay Rs. 100/- to each of them for running business smoothly. According to the prosecution, the complainant told the respondent no. 1 that he would think over the matter and thereupon the accused left the place. The prosecution has alleged that again the complainant had occasion to meet the respondents at Zonal office on April 1, 1987, when he had gone for renewal of the monthly permit and the respondents had inquired as to what he had decided after thinking over the matter. The prosecution case is that the complainant replied in the affirmative but stated that he had not brought the amount to be paid to the respondents, whereupon, the respondents informed the complainant that they would come to his shop at any time and the complainant had invited them to his shop. The case put forth by the prosecution is that in the evening of April 29, 1987 at about 4 p.m., the respondents had

come to the shop of the complainant and inquired as to which arrangement was made by the complainant for money to be paid to them, whereupon, the complainant had told the respondent no. 1 that he had not committed any irregularities and therefore, there was no question of making payment of money at all. The prosecution has claimed that the respondent no. 1 on hearing reply of the complainant, informed him that the shop would be thoroughly checked by them and even small irregularities would be blown out of proportion, resulting into detention of the complainant under MISA (The Maintenance of Internal Security Act, 1971). The prosecution has alleged that thereupon the complainant was frightened and agreed to pay Rs. 100/- each to the respondents and respondent no. 1 had instructed him to come to the Zonal Office and make the payment of money between First to Third of the month following. The prosecution avers that the complainant was not willing to give amount to the respondents by way of bribe and therefore, approached office of the Anti-Corruption Bureau, where his complaint was recorded by the Police Inspector Shri Kanchanlal Ratilal Jadav. On complaint being lodged, two panch witnesses were summoned in whose presence the complainant had produced four notes each of denomination of Rs. 50/to be paid as bribe to the respondents and after conducting experiment of anthracene power with ulta-virus lamp, the first part of the panchnama was concluded in the office of the ACB. According to the prosecution, thereafter, the panch No. 2 i.e. Rajesh Babulal was instructed to be with the complainant and raiding party had gone to the Paldi Zonal office. The prosecution has claimed that at Paldi Zonal Office, of the Civil Supply Department, the officers who were on duty had inspected indent and registers brought by the complainant and at about 13.20 hours, the complainant had asked the respondent no. 1 to come near cupboard, which was in the vicinity of table of one Shri Valand and the respondent no. 1 had accepted two notes of Rs. 50/- each offered by the complainant. The prosecution has alleged that the complainant had made inquiries about the respondent no. 2 from Shri Valand, who had informed him that the respondent no. 2 had not come to the office and on signal being given by the panch No. 2, the raiding party had rushed in and recovered two notes having denominations of Rs. 50/- each from the pocket of trousers put on by the respondent no. 1. Thereafter, hands, cloths and parts of the body of the respondent no. 1 were seen in the rays of ultraviolet lamp and after mentioning the said fact as well as after tallying the numbers of notes recovered from the respondent no. 1 with the numbers mentioned in the first part of the

panchnama, the second part of the panchnama was concluded. The house of the respondent no. 2 was searched but nothing incriminating was found. Further investigation into the case was made by P.I. Mr. Jadav and at the conclusion of the investigation, the respondents were chargesheeted of the offences punishable under the provisions of Indian Penal Code as well as Prevention of Corruption Act, 1947. The learned Special Judge had framed charge against the respondent no. 1 under Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 and against the respondent no. 2 under Section 165 - A of the Indian Penal Code. Both the respondents were also charged under Sections 161, 165-A read with Section 34 of the I.P.C. and Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 read with Section 34 of the I.P.C. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Amrutbhai Shankarbhai Prajapati, P.W. - 1, Ex. 11 (2) Rajeshbhai Babulal, P.W. - 2, Ex. 13, (3) Babulal Mohanlal Modi, P.W. -3 , Ex. 21, (4) Kanchanlal Ratilal Jadav, P.W.-4, Ex. 25 and also produced documentary evidence such as complaint lodged by Babulal Modi, panchnama prepared containing two parts, sanction to prosecute the respondents etc. to prove its case against the respondents. After recording of evidence of prosecution witnesses was over, the learned Special Judge recorded the statements of the respondents under Section 313 of the Code of Criminal Procedure, 1973. In their further statements, the respondents stated that the prosecution case against them was false. The respondent no. 1 in his further statement explained that the complainant was selling essential commodities in black market with the aid of one Umeshbhai and as the complainant had found that he (respondent no. 1) was creating hurdles, the complainant had filed a false case against him. The respondent no. 2 also claimed in his statement that because of the raid carried out by Civil Supply Department, a false case was lodged by the complainant against him. Though, the respondents claimed that the case of prosecution against them was false, they did not examine any witness in support of their defence.

3. On appreciation of evidence adduced by the prosecution, the learned Special Judge deduced that the respondents were public servants at the relevant time and sanction to prosecute was valid but it was not proved by the prosecution that the respondents had demanded installments of Rs. 100/- for each month for each of them either on March 18, 1987 or April 1, 1987 or April 29, 1987. The learned Special Judge further held that

the prosecution failed to prove that the respondent no. 1 had demanded Rs. 100/- as an installment of bribe money on May 2, 1987 and that the complainant had offered the same to the respondent no. 1. The learned Special Judge was of the view that the prosecution could not prove that the respondent no. 1 had accepted an amount of Rs. 100/- by way of bribe on May 2, 1987 as alleged by the prosecution nor could it prove that the respondent no. 2 had abetted the respondent no. 1 in accepting the amount of bribe. In view of the above referred to conclusions, the learned Special Judge has acquitted the respondents by judgement dated February 19, 1990 giving rise to the present appeal.

4. Mr. B.D. Desai, Learned APP after taking us through the entire evidence on record submitted that the evidence of the complainant is corroborated in material particular not only by his complaint but also by sworn testimony of panch witness Rajesh Babulal as well as evidence of P.I. Shri Jadav and therefore, the case of the prosecution against the respondents ought to have been accepted by the learned Judge. The learned counsel emphasised that the evidence of complainant Babubhai clearly proves that the respondents had demanded Rs. 100/- for each of them as illegal gratification and as the trap was successful, the respondents ought to have been convicted of the offences with which they were charged. According to the learned APP, the evidence of the complainant - Babubhai which is corroborated by evidence of independent panch witnesses as well as P.I. Mr. Jadav should be accepted and the appeal should be allowed.

5. Mr. K.R. Raval, learned counsel appearing for Shri A.D. Shah, learned advocate on record for the respondents urged that the complainant had bad antecedents and therefore, the learned Special Judge did not commit any error in seeking corroboration to his testimony. Stress was laid on the circumstance that the complainant had not informed another partner i.e. Rajeshbhai, who had 75% share in the partnership firm about the so called demand of bribe made by the respondents and therefore, the learned Judge was justified in disbelieving the case of the prosecution regarding demand of bribe made by the respondents on March 18,1987, April 1, 1987 and April 29, 1987. The learned counsel for the defence emphasised that neither the complainant nor the panch witnesses examined have stated in their substantive evidence before the Court that emission of light blue fluorescent light was noticed when ultra-virus lamp was focussed and the case against

the respondents having not been proved beyond reasonable doubt, the appeal should be dismissed.

6. We have heard the learned counsel for the parties and taken into consideration the evidence on record. The fact that the respondents were public servants at the relevant time is not in dispute. So, also the validity of the sanction to prosecute the respondents is not under challenge. Therefore, the findings recorded by the learned Special Judge to the effect that the respondents were public servants and sanction to prosecute is valid being eminently just are hereby upheld.

7. Generally speaking, there are four different kinds of bribe givers. Firstly, the persons who offer bribe to prompt, a public servant to do an undeserved favour. Secondly, the persons who pay to a public servant to see that normal official act is done early and promptly and in favour of the bribe giver. Thirdly, the type of person who is driven to pay a bribe on demand to do a normal work just to avoid coercion or harassment in getting the work which could normally be done in the normal routine work and fourthly, there are persons who pay bribe to a public servant on demand by the public servant, even after work is done. The complainant according to him belongs to the third category of bribe givers. The record of the case and more particularly the admissions made by the complainant during the course of his cross examination make it evident that the complainant had committed several irregularities while running fair price shop in essential commodities such as palmolive oil, wheat, rise etc. and was found guilty on four different occasions. The complainant was also found to have been involved in an attempt to dispose of 10 quintals of sugar illegally with the aid of one Umeshbhai. Under these circumstances, the conclusion drawn by the learned Special Judge that the evidence of complainant alone cannot be relied upon without corroboration before believing the case against the respondents cannot be said to be erroneous in view of bad antecedents of the complainant. According to the complainant, the respondents had demanded Rs. 100/- each for each of them on three different dates i.e. on March 18, 1987, April 1, 1987 and April 29, 1987 but admittedly, the complainant had not informed his partner Rajeshbhai about the same at all. It is relevant to notice that Rajeshbhai had 75% share in the profits of the business, whereas, the complainant was having only 25% share in the profits of the business. Further the licence for running the fair price shop was in the name of Rajeshbhai and all official dealings had to be made in

the name of Rajeshbhai. Moreover, according to the complainant he was threatened with detention under MISA. Under the circumstances, if demand of illegal bribe had been made, the complainant would not have failed to inform Rajeshbhai about the same. The case of the prosecution that the respondent no. 1 had threatened to detain the complainant under MISA also does not inspire confidence because the so called demand was made in the month of March and April of 1987, whereas the Maintenance of Internal Security Act, 1971 was repealed by Act 27 of 1978 and was not in force at all in the year 1987. The learned Special Judge has given cogent and detailed reasons for disbelieving the case of the prosecution regarding the demand of bribe by the respondents on March 18, 1987, April 1, 1987 and April 29, 1987 in Paras 16 to 21 of the Judgement with which, we concur and we hold that the prosecution has failed to prove that the respondents had demanded illegal bribe on three different dates as claimed by the complainant.

8. So far as demand and acceptance of bribe money at Zonal Office is concerned, we find that panch witness Rajesh Babulal, who was instructed to be with the complainant all through out and hear the talks between the complainant and respondents has not supported the complainant. Panch witness Rajesh Babulal could not state before the Court as to which talk had transpired between the complainant and the respondent no. 1. Further one Jayantilal Panchal, who had conducted test of Anthracene Powder at ACB Office had not washed his hands and had taken out so called notes from the pocket of respondent no. 1, which according to the prosecution were found to have been smeared with anthracene powder. We further find that panch witness Rajeshbhai has claimed in his evidence that he had taken out bribe amount from the pocket of respondent no. 1, whereas, the complainant Babulal has maintained in his deposition before the Court that bribe amount was taken out by Jayantilal Panchal. Moreover, we find material contradictions in the evidence of the complainant, panch witness Rajeshbhai and P.I. Mr. Jadav regarding test of anthracene powder conducted after recovery of notes from the pocket of the respondent no. 1. The complainant has maintained that the test was carried out by Jayantilal Panchal, whereas, P.I. Mr. Jadav has claimed that the test was carried out by Police Constable Mr. Bipinchandra Solanki, who is not examined by the prosecution at all. Further the two tests required to be satisfied by the prosecution to prove the presence of anthracene powder are, (1) that no powder was detected with the naked eye and (2) that when ultra violet light was focussed, there was emission of light

blue fluorescent light. The evidence does not establish that these two tests were conducted satisfactorily. As observed earlier for selling essential commodities in black market, the complainant was earlier dealt with under the provisions of the Essential Commodities Act and Order promulgated thereunder and fined. Therefore, the possibility of false implication of the respondents is not ruled out. In fact, there is no convincing evidence against the respondent no. 2 at all. The learned Special Judge has given convincing reasons for disbelieving the case of the prosecution regarding demand and acceptance of bribe money by the respondent no. 2 at Zonal Office in paras 20 to 41 of the impugned judgement, with which, we fully concur.

9. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such as case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of learned Special Judge, who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Special Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the trial Court, and in our view, expressions of general agreement with the view taken by the learned Special Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. Vs. Bijendra Narain Chaudhary, A.I.R. 1967, S.C. 1124, and (2) State of Karnataka Vs. Hema Reddy and another, A.I.R. 1981 SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Special Judge for acquitting the respondents. Suffice it to say that the learned Special Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Special Judge in order to convince us to take the view contrary to the one already taken by the learned Special Judge.

10. For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned Special Judge in the impugned judgement.

(J.M. Panchal,J.)

(Sharad D.Dave,J.)

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